IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

M.F.A.No.1419 of 2001

W.C.C.NO.45/1995 OF THE COURT OF THE COMMISSIONER FOR WORKMEN'S COMPENSATION, THIRUVANANTHAPURAM.

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APPELLANT/1ST OPPOSITE PARTY:-

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* P.T.THOMASKUTTY, MUNDAYIL HOUSE, THELLIYOOR MURI, DO VILLAGE, MALLAPPALLY TALUK **(DIED)**.

* ADDITIONAL APPELLANTS 2 TO 4 IMPLEADED:

ADDL.2. BRIGEETHAMMA THOMAS, W/O.P.T.THOMASKUTTY, MUNDANILKUNNATHIL, THELLIYOOR P.O., DIST. PATHANAMTHITTA.

ADDL.3. TIBU THOMAS, S/O.P.T.THOMASKUTTY, MUNDANILKUNNATHIL, THELLIYOOR P.O., DIST. PATHANAMTHITTA.

ADDL.4. JOSEPH THOMAS, S/O.P.T.THOMASKUTTY, MUNDANILKUNNATHIL, THELLIYOOR P.O., DIST. PATHANAMTHITTA.

* (ADDTIONAL APPELLANTS 2 TO 4 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF DECEASED SOLE APPELLANT AS PER ORDER DATED 7.4.2005 IN I.A.NO.598/2005).

BY ADV. SRI.P.KESAVAN NAIR
SRI.K.G.CLEETUS

RESPONDENTS/APPLICANT & 2ND RESPONDENT:-

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1. RAJU, S/O.SIVARAMAN, PUTHENTHARA HOUSE, PASUPARA MURI, VAKAMA VILLAGE, PEERMAD TALUK, IDUKKI DISTRICT.

2. THE EXECUTIVE ENGINEER, PWD (RADS DIVN.), PATHANAMTHITTA.

R1 BY ADV. SRI.M.P.KRISHNAN NAIR
SRI.K.MANOJ.

R2 BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.No.1419 of 2001

Dated, this the 23rd day of March, 2007

JUDGMENT

The employer, who was the 1st Opposite Party in W.C.C.No.45 of 1995 on the file of Commissioner for Workmen's Compensation, Thiruvananthapuram is the appellant. The 1st respondent filed a petition claiming compensation of Rs.1,50,000/- against the deceased sole appellant stating that he sustained an employment injury on 20.12.1993. The case of the 1st respondent was that he was engaged by the deceased appellant for road tarring and while he was working, the pipe of the burner leaked. The Kerosene sprayed on him and caught fire. As a result of the accident, he had sustained 20 burns of about 55% on his face, chest, hands and on the upper part of both the limbs. There was disfiguration of face and caused permanent disability to the right hand. According to him, his monthly wages was Rs.1,500/-. Because of the contention raised by the appellant, the Executive Engineer, Public Works Department (Roads Division), Pathanamthitta was also impleaded. He raised a

contention that P.W.D. has nothing to do with the work of tarring of the road as the 1st respondent was engaged by the appellant. Though the employer raised a contention that the 1st respondent was not engaged by him and engaged by another person by name T.K.Bhaskaran, relying on the evidence adduced by both sides the Commissioner found that he was engaged by the appellant. It is seen that the 1st respondent was cross-examined at length regarding his employment. He stated in his cross examination that he was employed by P.T.Thomaskutty, the deceased appellant. The Commissioner, who had opportunity to watch the demeanor of the witnesses, had accepted the evidence of the workman. It is pertinent to note that the appellant did not go to the box and lead any evidence controverting the evidence adduced by the 1st respondent. After considering the nature of injuries, the Tribunal fixed permanent partial disability of the 1st respondent at 35% and found that the 1st respondent is entitled to get an amount of Rs.36,736/-. The wages of the 1st respondent was taken as Rs.1,000/- only. That is also a finding of fact based on good evidence. There is no scope for interference in this matter. So, the appeal is only to be dismissed.

In the result, the appeal is dismissed. C.M.P.No.9329 of 2001 also shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-